In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 591

SAFEWAY STORES, INCORPORATED, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The conditional cross-petition for certiorari in this case seeks review of the same judgment of the Court of Claims as is involved in the petition filed by the Government in *United States* v. *Safeway Stores, Incorporated,* No. 590, this Term. Petitioner, while supporting the Court of Claims' holding that there was a taking of petitioner's property under the Fifth Amendment, contends that the court below committed error in determin-

ing the amount of just compensation to which it was entitled. According to petitioner, the court should have measured just compensation by the retail ceiling price for meat rather than the lower wholesale ceiling price, and consequently that the award measured by the wholesale price plus special subsidies was inadequate.

The United States believes that these contentions are unsound. As appears in our petition in No. 590, we are of the view that there was no taking of petitioner's property. Further, even if there were a taking, petitioner would not be entitled, under the Fifth Amendment, to any compensation in addition to the wholesale ceiling price, which it had already received, since (1) in the circumstances of this case, the application of wholesale ceiling price was fair and equitable both to the petitioner and the Government, and (2) not only is the Court of Claims without jurisdiction to award, or to pass upon petitioner's entitlement to, the special subsidies, but the denial of these subsidies to petitioner did not constitute an exceptional circumstance, entitling petitioner to compensation in excess of the applicable ceiling price under the rule set out in *United States* v. *Commodities Trading Corp.*, 339 U. S. 121, 128. Thus, whatever errors the court below committed, we believe, favored petitioner. However, since the issues presented by the United States and petitioner arise out of the same judgment of the Court of Claims and relate to the same

general problem, the United States does not, if its petition is granted in No. 590, oppose the review sought by the petition in this case.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

MAY 1951.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 943909 928